314 U.S. 641

Office - Supreme Court, U. S.
FILED
JUN 25 1941
CHARLES ELMORE CROPLEY
CLERK

In the Supreme Court of the United States

October Term 1941

No. 205

A. CRAWFORD GREENE, Guardian of the Estate of Alice H. Lester, an incompetent person,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit
and
Brief in Support Thereof

J. M. MANNON, JR.,
Attorney for Petitioner.

JOHN W. PARKER,
MORRIS M. DOYLE,
Of counsel.

June 21, 1941.

PARKER PRINTING COMPANY, 545 SANSOME STREET, SAN FRANCISCO

Subject Index

Page

Petition for Writ of Certiorari 1
Summary statement of the matter involved 2
Opinions below 4
Statement of basis of jurisdiction 4
Statutes involved 5
Questions presented 5
Reasons relied on for the allowance of the writ 6

Brief in Support of Petition for Writ of Certiorari 13
Specifications of error 13
Summary of argument 14
Argument 15

I. A consideration of California law is essential—not "immaterial"—to the determination of this case 15

II. The orders of the California court enforcing and measuring the obligation of support should have been accepted by the court below 17

III. The decision of this Court in *U. S. v. Pelzer*, ... U. S. ....., 85 L. Ed. (Adv. Ops.) 625, has been misapplied 20

IV. Two judges of the Circuit Court of Appeals for the Ninth Circuit decided this case on grounds in direct conflict with the expressed views of the remaining five judges of said court, and in conflict with applicable decisions of this Court 22

Appendix i

Statutory provisions involved i

Revenue Act of 1932, Section 501 (Title 26 U. S. C., 1934 Ed. Sec. 550) i
Revenue Act of 1932, Section 503 (Title 26 U. S. C., 1934 Ed. Sec. 552) i

California Civil Code, Section 206 ii
California Probate Code, Section 1502 ii
California Probate Code, Section 1558 ii

Table of Authorities Cited

CASES

Page

Bank of America v. Com'r, 90 F. (2d) 981, 983 ..... 10, 22
Blair v. Com'r, 300 U. S. 5, 9, 10 ..... 3, 5, 6, 7, 9, 10, 18, 19, 24

Douglas v. Willcuts, 296 U. S. 1 7

Estate of Lynch, 5 Coffey Probate Reports 279 (Cal. 1894) 16

Freuler v. Helvering, 291 U. S. 35 ..... 3, 5, 6, 9, 18

Helvering v. Fuller, 310 U. S. 69, 71 ..... 7, 21
Helvering v. Leonard, 310 U. S. 80 7
Helvering v. Schweitzer, 296 U. S. 551 7
Helvering v. Stokes, 296 U. S. 551 7

Ingraham v. Com'r, 119 F. (2d) 223 (C.C.A. 9th Cir. Apr. 11, 1941) 11, 24

John Hancock Mut. Life Ins. Co. v. Bartels, 308 U. S. 180, 181 ..... 11, 26

Lang v. Com'r, 304 U. S. 264 ..... 6, 7, 9, 24
Lang's Estate v. Com'r, 97 F. (2d) 867, 869-870 ..... 10, 23

Poe v. Seaborn, 282 U. S. 101, 111, 112 ..... 6, 10

U. S. v. Pelzer, ... U. S. ....., 85 L. Ed. (Adv. Ops.) 625 ..... 4, 8, 9, 14, 20
Uterhart v. United States, 240 U. S. 598 6

	Page	Appendix
California Civil Code, Sec. 206	5, 16	ii
California Code of Civil Procedure, Secs. 939, 963	18	
California Probate Code, Secs. 1240 and 1630	18	
California Probate Code, Sec. 1502	5, 16	ii
California Probate Code, Sec. 1558	5, 17	ii, iii
Judicial Code, Sec. 240 (a)	4	
Revenue Act of 1932:		
Sec. 501		i
Sec. 503	16	i
Sec. 504 (b)	8, 20	

TEXTS

Montgomery and Magill, "Federal Taxes on Estates, Trusts and Gifts," 1936-37, pp. 355, 356	8
Robertson and Kirkham, "Jurisdiction of the Supreme Court of the United States," 1936, Sec. 306, pp. 619, 620	11
Vernier, American Family Laws, Vol. 2, p. 265	15
Vol. 2, pp. 471-491	15
Vol. 3, pp. 108-111	15
Vol. 4, pp. 56-92	15
Vol. 4, pp. 93-109	16

In the Supreme Court of the United States

October Term 1941

No. .....

A. Crawford Greene, Guardian of the Estate of Alice H. Lester, an incompetent person,

Petitioner,

vs.

Commissioner of Internal Revenue,

Respondent.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit

To the Honorable, the Supreme Court of the United States:

Your petitioner, A. Crawford Greene, Guardian of the Estate of Alice H. Lester, an incompetent person, respectfully prays that a writ of certiorari issue to review the judgment (R. Vol. I, 123) of the United States Circuit Court of Appeals for the Ninth Circuit entered on April

21, 1941, in a cause numbered and entitled on its docket #9619, *Commissioner of Internal Revenue, Petitioner, vs. A. Crawford Greene, Guardian of the Estate of Alice H. Lester, an incompetent person, Respondent,* reversing decisions of the United States Board of Tax Appeals. Petition for rehearing was denied May 23, 1941.

SUMMARY STATEMENT OF THE MATTER INVOLVED

The matter involved is the federal gift tax liability of Alice H. Lester, an incompetent person, for the calendar years 1936 and 1937. The material facts appear without controversy. They are set forth in an Agreed Statement of Facts (R. Vol. I, 52-63). For more than thirty years the matter of the estate of said incompetent has been pending in the Superior Court of the State of California in and for the County of El Dorado. From time to time that court on applications by the incompetent's husband and two daughters, after hearings duly and regularly noticed and held, made allowances from the estate for their maintenance and support. For a considerable time prior to his death in 1933 the incompetent's husband was bedridden and dependent on his wife's estate for support. The incompetent's daughters have always been dependent on their mother's estate for support. The applications to and orders of the California court are set forth as Exhibit 1 to the Agreed Statement of Facts and form Volume II of the Record. By 1936 the accumulated total of these allowances paid since the effective date of the Gift Tax Act (June 6, 1932) exceeded the allowable credits and exemptions under that Act. Respondent Commissioner as-

sessed a gift tax deficiency for 1936 and another for 1937 (R. Vol. I, 19, 42). The proceedings for these two years were consolidated for hearing. Only payments for support and maintenance are involved. Extra allowances from surplus income of the incompetent's estate, first made in 1937 under a California statute passed in 1935, were held to be taxable gifts by the Board of Tax Appeals and petitioner did not appeal from that holding (R. Vol. I, 56, 57, 81-83).

Petitioner has contended that the support and maintenance allowances made by the California court were compelled by California statutes and were obligatory on the incompetent's estate. The Board of Tax Appeals so held, and concluded that the payments of the allowances were not gifts (R. Vol. I, 64, 80, 81; 41 B. T. A. 515, 522). One judge of the Circuit Court of Appeals for the Ninth Circuit agreed with the Board, but two judges of that court reversed the Board, saying that "it is immaterial what local statutes said, or local courts held" (R. Vol. I, 112, 120); and holding in effect that payments made in discharge of an obligation imposed by state law are taxable gifts. Apparently five judges of the same court would disagree with this failure to apply local law (infra, pp. 9-11, 22-25).

Petitioner has also contended that the final judgments of the California court enforcing an obligation of support against the incompetent's estate were binding in this tax proceeding under the principles of *Freuler v. Helvering*, 291 U. S. 35; *Blair v. Commissioner*, 300 U. S. 5, and other cases. These decisions were dismissed in the majority opinion of the Circuit Court of Appeals for the Ninth Circuit with the comment that "None of such cases in-

volve the gift tax act, and are, therefore, not in point" (R. Vol. I, 120).

Said Circuit Court of Appeals relied upon the recent decision of this court in *U. S. v. Pelzer,* .... U. S. ....., 85 L. Ed. (Adv. Ops.) 625, for its conclusion that the payments involved are gifts whether obligatory under state law or not. Petitioner asserts that the *Pelzer* case has been misapplied (infra, pp. 8-9, 20-21).

OPINIONS BELOW

The findings of fact, opinion and decisions of the Board of Tax Appeals are reported at 41 B. T. A. 515, 516, 522, and appear in the Record (R. Vol. I, 64, 78, 86, 87). The opinion of the Circuit Court of Appeals for the Ninth Circuit is reported at 119 F. (2d) 383, and appears in the Record (R. Vol. I, 112).

STATEMENT OF BASIS OF JURISDICTION

1. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, 28 U. S. C. A., Section 347.

2. The judgment of the Circuit Court of Appeals for the Ninth Circuit sought to be reviewed was entered on April 21, 1941 (R. Vol. I, 123, 124). Petition for rehearing was seasonably filed and was denied May 23, 1941 (R. Vol. I, 124).

STATUTES INVOLVED

The case involves the provisions of the Revenue Act of 1932 commonly known as the Gift Tax Act (47 Stat. 245; 26 U. S. C., 1934 Ed., Sections 550, et seq.). California statutes relied on by petitioner and referred to in the opinions of the Board of Tax Appeals and the Circuit Court of Appeals are California Civil Code, Section 206; California Probate Code, Section 1502; and California Probate Code, Section 1558. Pertinent provisions of these statutes are reproduced in the Appendix.

QUESTIONS PRESENTED

Whether the Circuit Court of Appeals for the Ninth Circuit erred:

1. In holding that payments made in discharge of an obligation of support and maintenance imposed by state statutes are taxable gifts.

2. In holding that the question whether state law created and state courts had enforced an obligation against the incompetent's estate to make the payments involved is "immaterial" in these tax proceedings.

3. In holding that because *Freuler v. Helvering*, 291 U. S. 35, and *Blair v. Commissioner*, 300 U. S. 5, involved the Income Tax Act and not the Gift Tax Act, the rule of those cases is not applicable to the Gift Tax Act.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

1. The court below has decided two important questions of federal law which have not been, but should be, settled by this Court, in holding

(a) That payments made in discharge of an obligation of support and maintenance imposed by state statutes are taxable as gifts.

(b) That the principles of *Freuler v. Helvering*, 291 U. S. 35, *Blair v. Commissioner*, 300 U. S. 5, and similar cases do not apply to the Gift Tax Act because those cases did not involve the Gift Tax Act.

2. The decision below is in conflict with applicable decisions of this Court.

(a) In *Uterhart v. United States*, 240 U. S. 598 (succession tax), *Poe v. Seaborn*, 282 U. S. 101 (income tax), *Freuler v. Helvering*, 291 U. S. 35 (income tax), *Blair v. Commissioner*, 300 U. S. 5 (income tax), and *Lang v. Commissioner*, 304 U. S. 264 (estate tax), this Court held that the operation of federal tax laws may be dependent on state law. The majority of the court below in the present case referred to the *Blair* and *Freuler* cases, among others, and said (R. Vol. I, 120):

> "None of such cases involve the gift tax act, and are, therefore, not in point."

The rule of the cases cited is not peculiar to the federal revenue laws there involved. Those cases stand for the general principle that federal tax laws operate on rights and obligations created by state law and that the orders

of state courts in matters of the kind here involved are to be accepted as final. That principle has been applied indiscriminately in both income and estate tax cases and is no less applicable to gift taxes. The principle relates to the appropriate exercise of federal jurisdiction (*Blair v. Commissioner*, 300 U. S. 5, 10) and not to the interpretation of any particular statute. Under that rule the final judgments of the California probate court enforcing and measuring the obligation of support and maintenance should have been accepted in this case. In refusing to recognize the proceedings of the local court, the court below has failed to follow the aforementioned decisions of this Court. It has also ignored the express admonition of this Court in *Lang v. Commissioner*, 304 U. S. 264 at 267 (infra, p. 10).

(b) The accuracy of petitioner's assertion that the existence of an obligation of support must be determined with reference to state law is also demonstrated by the so-called support and alimony trust cases.[1] In those cases this Court held that the income from a trust for the support of wife or children is taxable to the trustor unless under state law creation of the trust completely discharged the trustor from any continuing obligation. The question whether an obligation of support continued after creation of the trust was in each instance determined by reference to state law.

Additionally it has been suggested that it follows from the reasoning of *Douglas v. Willcuts*, 296 U. S. 1, "that

---

[1] *Douglas v. Willcuts*, 296 U. S. 1; *Helvering v. Stokes*, 296 U. S. 551; *Helvering v. Schweitzer*, 296 U. S. 551; *Helvering v. Fuller*, 310 U. S. 69; and *Helvering v. Leonard*, 310 U. S. 80.

to the extent that property or income is to be used to discharge the settlor's pecuniary obligations, he has made no taxable gift."

Montgomery and Magill, "Federal Taxes on Estates, Trusts and Gifts" 1936-37, pp. 355, 356.

In holding that the existence of an obligation under local law is not material because in any event the payments here involved are taxable gifts, the decision of the court below is at variance with the implications and reasoning of the support and alimony trust cases.

3. The decision of the court below is a misapplication of the decision of this Court in *U. S. v. Pelzer,* ..... U. S. ....., 85 L. Ed. (Adv. Ops.) 625.

The majority opinion of the court below relies on the decision of this Court in *U. S. v. Pelzer,* ..... U. S. ....., 85 L. Ed. (Adv. Ops.) 625, which was decided after this case was argued and submitted, and concludes therefrom that "it is immaterial what local statutes said, or local courts held" (R. Vol. I, 120). In the *Pelzer* case the question was whether the term "future interests", as used by Congress in the Gift Tax Act (Section 504 (b) of the Revenue Act of 1932), should be defined by the law of the state where the gift in trust was made. This Court decided that the exclusion of gifts of "future interests" from the exemption benefits given by said Section 504 (b) carried no implication that the definition of "future interests" should depend on local law. The court below erroneously concluded that such decision was controlling authority in this case.

Although the decision in the *Pelzer* case may well be authority for the determination of the court below in the present case that the term "consideration" as used in Section 503 of the same act is not to be defined by state law, it is clearly not authority for the conclusion that payments for support of relatives are without "consideration" and therefore gifts (whether obligatory under local law or not), or for the conclusion that it is here "immaterial" whether local statutes created an obligation which a local court enforced. The existence of an obligation of support must depend upon local law. Thus the court below has misapplied the *Pelzer* case to the facts herein and has used that case to reach a result which disregards the rule of *Freuler v. Helvering*, 291 U. S. 35; *Blair v. Commissioner*, 300 U. S. 5; and *Lang v. Commissioner*, 304 U. S. 264, and which is at variance with the implications and reasoning of the support and alimony trust cases.

4. The decision of the court below, rendered by two judges, is in conflict with decisions rendered by the other five judges of the same court.

On the question whether state law applies in federal tax matters, the judges of the Circuit Court of Appeals for the Ninth Circuit are in disagreement. Judges Haney and Garrecht decided the present case in which the essential question is whether payments made under court order for support and maintenance of an incompetent's husband and daughters are gifts. Until their decision it was supposed that if the orders for the payments enforced an obligation of support imposed by California law, the payments were not gifts. But they have now held that "it is

immaterial what local statutes said, or local courts held." Judge Stephens dissented (R. Vol. I, 121). Judges Haney and Garrecht also decided *Bank of America v. Commissioner,* 90 F. (2d) 981, an estate tax case in which the taxpayer contended that California community property law was controlling, and held that "whatever the local law may be, we believe it to be immaterial" (90 F. (2d) 981, 983). Judge Wilbur dissented in the *Bank of America* case (90 F. (2d) 983). In *Lang's Estate v. Commissioner,* 97 F. (2d) 867, likewise an estate tax case in which the taxpayer relied on the Washington community property law, Judges Denman, Mathews and Healy disagreed with the decision in *Bank of America v. Commissioner,* and certified the case of *Lang's Estate* to this Court because they were "faced with the situation where the decision of two judges of the circuit made a precedent for the remaining five" (97 F. (2d) 867, 869). Answering that certificate, in *Lang v. Commissioner,* 304 U. S. 264, this Court expressly repudiated the statement in the *Bank of America* case, as follows:

> "The court [below] was perplexed by *Bank of America v. Commissioner of Internal Revenue,* 90 F. 2d 981, 983, which affirmed that the operation of that Act is not dependent upon local law and 'therefore whatever the local law may be we believe it to be immaterial.' This statement is not accurate and conflicts with what we have said. *Poe v. Seaborn,* 282 U. S. 101, 111, 112; *Blair v. Commissioner,* 300 U. S. 5, 9, 10." (304 U. S. at 267.)

In the present case, decided April 21, 1941, the two judges who concurred in the decision failed to observe the

admonition of this Court quoted above, and have again said that local law is "immaterial", although ten days earlier Judges Denman, Mathews and Stephens, in *Ingraham v. Commissioner,* 119 F. (2d) 223 (C. C. A. 9th Cir., April 11, 1941), applied Connecticut law to determine the existence of an obligation to support a taxpayer's wife and children.

It thus appears that two judges of the Circuit Court of Appeals for the Ninth Circuit are in disagreement with the other five judges of that court on an important question of federal law, and that whether state law is applied in federal tax cases in that court depends upon which particular combination of circuit judges happens to consider the case.

In a similar situation the supervisory jurisdiction of this Court was exercised by writ of certiorari.

> *John Hancock Mutual Life Ins. Co. v. Bartels,* 308 U. S. 180, 181.

See:

> *Robertson and Kirkham, "Jurisdiction of the Supreme Court of the United States,"* 1936, Section 306, pp. 619, 620.

WHEREFORE, petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Circuit Court of Appeals for the Ninth Circuit, commanding that court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and of all the proceedings in the case num-

bered and entitled on its docket #9619, *Commissioner of Internal Revenue, Petitioner, vs. A. Crawford Greene, Guardian of the Estate of Alice H. Lester, an incompetent person, Respondent,* and that the said judgment of the Circuit Court of Appeals for the Ninth Circuit be reversed, and that your petitioner have such other and further relief in the premises as to this Court may seem proper.

J. M. MANNON, JR.,
Attorney for Petitioner.

JOHN W. PARKER,
MORRIS M. DOYLE,
Of Counsel.

Dated: San Francisco, California, June 21, 1941.

In the Supreme Court of the United States

October Term 1941

No. .....

A. CRAWFORD GREENE, Guardian of the Estate of Alice H. Lester, an incompetent person,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Brief in Support of Petition for Writ of Certiorari

References to the opinions below are supplied in the petition (p. 4).

A statement of the case has been given in the petition (pp. 2-4) and to avoid duplication is not repeated.

SPECIFICATIONS OF ERROR

The errors intended to be urged are those specified in the accompanying petition and numbered 1 to 3, inclusive (p. 5), the same being assigned as error.

SUMMARY OF ARGUMENT

Review by writ of certiorari is sought herein because the Circuit Court of Appeals for the Ninth Circuit has refused to apply state law and has thereby reached the extraordinary conclusion, for which there is no precedent, that payments made in discharge of an obligation of support imposed by state law are taxable as gifts under the federal law. This conclusion has been reached both through failure to apply and misapplication of decisions of this Court defining the impact of state law in federal tax controversies. It is demonstrable that as to the pertinence of local law in matters of the kind here involved, five judges of the court below disagree with the two judges of said court who decided this case. This brief will seek to show that in refusing to apply the local law, the decision below is out of line with controlling authority. The points are developed as follows:

I.

A consideration of California law is essential—not "immaterial"—to the determination of this case.

II.

The orders of the California court enforcing and measuring the obligation of support should have been accepted by the court below.

III.

The decision of this Court in *U. S. v. Pelzer,* ..... U. S. ....., 85 L. Ed. (Adv. Ops.) 625, has been misapplied.

IV.

Two judges of the Circuit Court of Appeals for the Ninth Circuit decided this case on grounds in direct con-

flict with the expressed views of the remaining five judges of said court, and in conflict with applicable decisions of this Court.

ARGUMENT

I.

A CONSIDERATION OF CALIFORNIA LAW IS ESSENTIAL—NOT "IMMATERIAL"—TO THE DETERMINATION OF THIS CASE.

The Circuit Court of Appeals below said "it is immaterial what local statutes said, or local courts held" (R. Vol. I, 120).

The foundation of this application for review is that the Circuit Court of Appeals should have, but did not, apply California law and follow the determinations of the California court. In petitioner's view there can be no proper decision of this case without reference to California law. Notwithstanding the decision below, it is submitted, without fear of contradiction by respondent, that if local law creates an obligation of support, payments made in discharge of that obligation are not taxable as gifts under the Revenue Act of 1932. Otherwise the payment of alimony,[1] separate maintenance,[2] support of either spouse by the other,[3] support of children by parents,[4]

---

[1] 47 American jurisdictions have statutes permitting the court to award alimony in absolute divorce cases. *Vernier, American Family Laws*, Vol. 2, p. 265.

[2] 36 states provide by statute for separate maintenance of the wife. *Vernier, American Family Laws*, Vol. 2, pp. 471-491.

[3] Many states provide by statute for the support of either spouse by the other. *Vernier, American Family Laws*, Vol. 3, pp. 108-111.

[4] All but one (Kansas) of the 51 American jurisdictions have statutes imposing civil liability on parents for support of children. See *Vernier, American Family Laws*, Vol. 4, pp. 56-92.

support of parents and other relatives by children,[5] and other obligations imposed by and enforced under state law are taxable as gifts. Congress plainly did not and could not intend the Gift Tax Act to be so inclusive, and nothing in Section 503 of the Act or elsewhere will justify that interpretation. Throughout this case respondent has virtually conceded that to the extent that the payments involved were in saisfaction of an obligation created by California law they are not taxable as gifts. It is accordingly necessary in the determination of this case to look at the California law and see whether the payments were obligatory. The court below refused to take this essential step.

So far as the California law is concerned there is no doubt that it imposes an obligation of support against the incompetent's estate in favor of her husband and daughters. California Civil Code Section 206 and California Probate Code Section 1502 (Appendix p. ii) are explicit and in terms of the stipulated facts of this case (R. Vol. I, 52-63) require the support and maintenance of the incompetent's husband and daughters from her estate.

> *Estate of Lynch*, 5 Coffey Probate Reports 279 (Cal. 1894),

held that these statutes created an obligation of support enforceable against the estate of an incompetent woman in favor of her adult son. There is no authority to the contrary. The Board of Tax Appeals held that there was

---

[5] A civil obligation of children to support parents exists by statute in all but 11 American jurisdictions. *Vernier, American Family Laws*, Vol. 4, pp. 93-109.

an obligation under California law (R. Vol. I, 78, 80-81; 41 B.T.A. 515, 523), as did the dissenting opinion in the Circuit Court of Appeals (R. Vol. I, 121, 122). The majority opinion below simply refused to consider the question, holding that California law is "immaterial" (R. Vol. I, 112, 120). Petitioner was and is entitled to have his case decided in the light of the California law.

The only payments in question before the Circuit Court of Appeals were those for support and maintenance. It is stipulated that prior to 1937 the California probate court refused to order any payments to the husband and daughters except for maintenance and support (R. Vol. I, 52, 55, 56). During 1937 and under California Probate Code Section 1558 (Appendix pp. ii-iii), which was enacted in 1935, payments were ordered made to the daughters from surplus income of the incompetent's estate other than and in addition to the allowances for maintenance and support (R. Vol. I, 56, 57). The Board of Tax Appeals held such additional surplus income payments taxable as gifts (R. Vol. I, 78, 81-83; 41 B. T. A. 515, 523, 524) and petitioner has not appealed from that determination.

II.

THE ORDERS OF THE CALIFORNIA COURT ENFORCING AND MEASURING THE OBLIGATION OF SUPPORT SHOULD HAVE BEEN ACCEPTED BY THE COURT BELOW.

If it is clear, as petitioner contends and as determined by the Board of Tax Appeals and by the only judge of the Circuit Court of Appeals who did not disregard the question, that California law imposed an obligation of

support which was enforced by the California probate court administering the incompetent's estate, then that court's measure of the obligation is conclusive in this tax controversy.

Freuler v. Helvering, 291 U. S. 35;
Blair v. Commissioner, 300 U. S. 5,

and a host of cases in the Circuit Courts of Appeals and before the Board of Tax Appeals support this view. The orders were made by the court which has administered the incompetent's estate for more than thirty years and is thoroughly familiar with the situation of the incompetent, her children and her property. In each of those orders the probate court found that the payees were "members of the family" of the incompetent, "wholly dependent upon the estate of Alice H. Lester for maintenance and support and have no other means with which to defray living expenses", and that "it is necessary for the comfortable and suitable maintenance and support of the family of said Alice H. Lester, of which petitioner is a member," that the allowances be made (e. g., R. Vol. II, Exhibit 1-F—page 2 of order dated November 28, 1931). The orders for support and maintenance have become final judgments.

California Probate Code, Sections 1240, 1630;
California Code of Civil Procedure, Sections 963, 939.

The conclusion of the California court that the daughters were dependent on their mother's estate and that the allowances are necessary for their support, and its decrees

ordering the payments for support and maintenance, are final in this tax proceeding. In the language of

Blair v. Commissioner, 300 U. S. 5, at 10:

> "To derogate from the authority of that conclusion and of the decree it commanded, so far as the question is one of state law, would be wholly unwarranted in the exercise of federal jurisdiction."

The *Blair* and *Freuler* cases, and other cases in the Circuit Courts of Appeals and before the Board of Tax Appeals which follow the rule of those cases, were brushed aside in the majority opinion of the court below with the comment that

> "None of such cases involve the gift tax act and are, therefore, not in point." (R. Vol. I, 120)

Thus the rule which has been consistently applied in Income and Estate tax cases is held to be inapplicable to the Gift Tax Act, without any citation of authority and without any statement of reasons for this important conclusion. It is plain from the holding of this Court in the *Blair* case that the principle announced therein is one of the appropriate exercise of federal jurisdiction in the administration of federal tax laws and in no way turns upon the particular Revenue Act involved. There is neither reason nor authority for the conclusion that the principle referred to has no application to the Gift Tax Act.

III.

THE DECISION OF THIS COURT IN U. S. v. PELZER, ... U. S. ....., 85 L. ED. (ADV. OPS.) 625, HAS BEEN MISAPPLIED.

It appears that the Circuit Court of Appeals reached its conclusion that California law is "immaterial" in this case in reliance upon the decision of this Court in

United States v. Pelzer, ... U. S. ....., 85 L. Ed. (Adv. Ops.) 625.

The *Pelzer* case was decided March 3, 1941, after this case was argued and submitted to the Circuit Court of Appeals (R. Vol. I, 111), and although petitioner's petition for a rehearing in that court stressed the fact that he had not been heard on the applicability of the *Pelzer* case as controlling authority herein, said petition for rehearing was denied (R. Vol. I, 124). The *Pelzer* case involved Section 504 (b) of the Gift Tax Act, which provides that the first $5,000 of each gift (other than of future interests in property) made to any person by the donor is excluded in computing the tax. The taxpayer in that case contended that the term "future interests" should be defined by the law of the state where his gifts in trust were made. This Court held that there was no implication in the exclusion of gifts of "future interests" from the benefits given by said Section 504 (b) that state law should control the definition of "future interests". After quoting from the *Pelzer* case the majority opinion of the Circuit Court of Appeals refers to Section 503 of the Gift Tax Act, which provides that a transfer of property for less than full and adequate consideration

in money or money's worth shall be deemed a gift to the extent that the value of the property exceeds the value of the consideration, and concludes that the term "consideration" as used in said section is not to be defined by local law (R. Vol. I, 119, 120). Petitioner does not dispute that conclusion, but insists that it affords no basis for deciding this case, or for holding that payments made in discharge of an obligation imposed by local law are gifts. In the language of the dissenting opinion of Judge Stephens, the determination that *consideration* is not to be defined by local law "is not to say that a transfer in discharge of a legal obligation imposed by local law is a transfer without consideration under the taxing act" (R. Vol. I, 122).

The *Pelzer* case has been cited as controlling authority for a conclusion it in no way supports, viz.: that local law is immaterial herein and hence these payments, though made in discharge of a legal obligation imposed by local law, are taxable gifts. Petitioner submits that misapplication of the *Pelzer* case, particularly as it reaches a result in conflict with other decisions of this Court (*supra*, pp. 6-8, 18-19) is ground for review by certiorari herein. In

Helvering v. Fuller, 310 U. S. 69,

this Court granted certiorari "because of the asserted misapplication by the Circuit Court of Appeals of the rule" of a case decided by this Court (310 U. S. 71).

IV.

TWO JUDGES OF THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT DECIDED THIS CASE ON GROUNDS IN DIRECT CONFLICT WITH THE EXPRESSED VIEWS OF THE REMAINING FIVE JUDGES OF SAID COURT, AND IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT.

The disagreement between the judges of the Circuit Court of Appeals for the Ninth Circuit as regards the crucial question in this case—whether local law applies in federal tax cases—presents an interesting situation which requires the attention of this Court. Consideration of the opinions of that court indicates that the two judges who decided this case are not applying local law, whereas the other five judges follow the decisions of this Court and readily apply the local law whenever the taxing statute either by express language or necessary implication makes its operation dependent upon local law. The following cases particularly demonstrate this conflict.

In

Bank of America v. Commissioner, 90 F (2d) 981,

the question was whether all or only half of the proceeds of insurance on decedent's life should be included in his estate for estate tax purposes. The insured and his wife resided in California and the insurance premiums had been paid from community funds. The executrix of decedent's estate claimed that under California community property law the wife was the owner of one-half the insurance proceeds and that accordingly only one-half thereof should be included in the decedent's estate. Judges

Haney and Garrecht said that "* * * whatever the local law may be we believe it to be immaterial * * *" (90 F (2d) 981 at 983), and held that the entire proceeds should be included in decedent's estate. Judge Wilbur dissented. There was no application to this Court for review.

In

Lang's Estate v. Commissioner, 97 F (2d) 867,

the question was identical with that involved in the *Bank of America* case, except that Washington community property law was relied upon by the taxpayer. Referring to the *Bank of America* case and the statement therein that local law is immaterial, Judge Denman, with Judges Mathews and Healy concurring, said (97 F (2d) at 869-870):

> "There was a dissent and this court was faced with the situation where the decision of two judges of the circuit made a precedent for the remaining five. The three judges sitting in this review did not agree with the decision in the Bank of America Case. Since no more than three judges may sit in the Circuit Court of Appeals, there is no method of hearing or rehearing by a larger number. Hence, rather than overrule the holding of the Bank of America Case, it was decided to present a certificate to the Supreme Court disclosing the conflict between the two groups of judges and asking that it be resolved by that tribunal.
>
> The Supreme Court responded by deciding that the Washington community law should be considered in determining the tax liability:
>
> 'Occasion for the certificate did not arise from doubts relating to the meaning of the community property laws of Washington, but from uncertainty

> concerning the application of the 1926 Revenue Act to an estate under administration in that State. The court was perplexed by Bank of America v. Commissioner of Internal Revenue, 9 Cir., 90 F. 2d 981, 983, which affirmed that the operation of that Act is not dependent upon local law and "therefore, whatever the local law may be, we believe it to be immaterial." This statement is not accurate and conflicts with what we have said. Poe v. Seaborn, 282 U. S. 101, 111, 112, 51 S. Ct. 58, 59, 75 L. Ed. 239; Blair v. Com'r, 300 U. S. 5, 9, 10, 57 S. Ct. 330, 331, 332, 81 L. Ed. 465.' Lang v. Com'r, 58 S. Ct. 880, 882, 82 L. Ed. ....., May 16, 1938."

The *caveat* of this Court, quoted above, has been disregarded in the present case, for Judges Haney and Garrecht, with Judge Stephens dissenting, have now again said that local law is "immaterial" in a case where by necessary implication the operation of the Gift Tax Act is dependent upon state law. Moreover, these judges have now also said that because *Blair v. Commissioner*, 300 U. S. 5, did not involve the Gift Tax Act, it is not in point here (R. Vol. I, 120). But the *Blair* case did not involve the estate tax act either, yet in the above quotation from *Lang v. Commissioner*, 304 U. S. 264, an estate tax case, it was cited by this Court as controlling.

This conflict between these judges is further evidenced by the opinion in

Ingraham v. Commissioner, 119 F. (2d) 223,

decided just ten days prior to the present case. That was an income tax case in which Judges Denman, Mathews

and Stephens applied Connecticut law without hesitation or question to determine whether the taxpayer was under a continuing obligation to support his wife and children notwithstanding a Connecticut divorce and establishment of a trust providing for income payments to the wife. They held that under a Connecticut statute as generally construed the husband was under no continuing obligation to support his wife and, accordingly, that the trust income paid to her was not taxable to him except to the extent that it was used by her to discharge his continuing obligation to the children.

In the present case the payments taxed were admittedly for "support and maintenance" of members of the incompetent's family. Petitioner contends that they were not gifts because made in discharge of an obligation imposed by California law. The existence of that obligation must be determined by reference to California law. Unless all payments for support of wife, children and relatives are to be taxed as gifts under the Revenue Act of 1932, whether obligatory under state law or not, this case cannot properly be decided without reference to California law. Judges Haney and Garrecht have refused to consider California law.

In view of this conflict between the judges of the Circuit Court of Appeals for the Ninth Circuit, a litigant whose tax liability depends upon the applicability of state law may obtain one judgment if his case is assigned to the judges who hold that local law is "immaterial" and a different judgment if his cause is assigned to the other judges of that court.

In this instance the failure to apply state law resulted in a judgment that money paid to satisfy an obligation of support imposed by state law is taxable as a gift under federal law. If that judgment is valid, the most important single distinguishing feature of a gift—donative intention—has been obliterated for purposes of the Gift Tax Act and the payment of any debt enforced under state law may be taxable as a gift under federal law. This is a most important federal question. It has been decided without precedent by two judges of the Circuit Court of Appeals with whom five of their colleagues disagree as to the principles involved.

In *John Hancock Mutual Life Ins. Co. v. Bartels*, 308 U. S. 180, this Court said: "Because of conflict in the rulings of the Circuit Court of Appeals for the Fifth Circuit, due to the differing views of the judges composing the court in the case cited, and because of the importance of the question, we granted certiorari, * * *" (308 U. S. at 181). For the same reasons, and the others set forth herein, petitioner prays that certiorari be granted in this case.

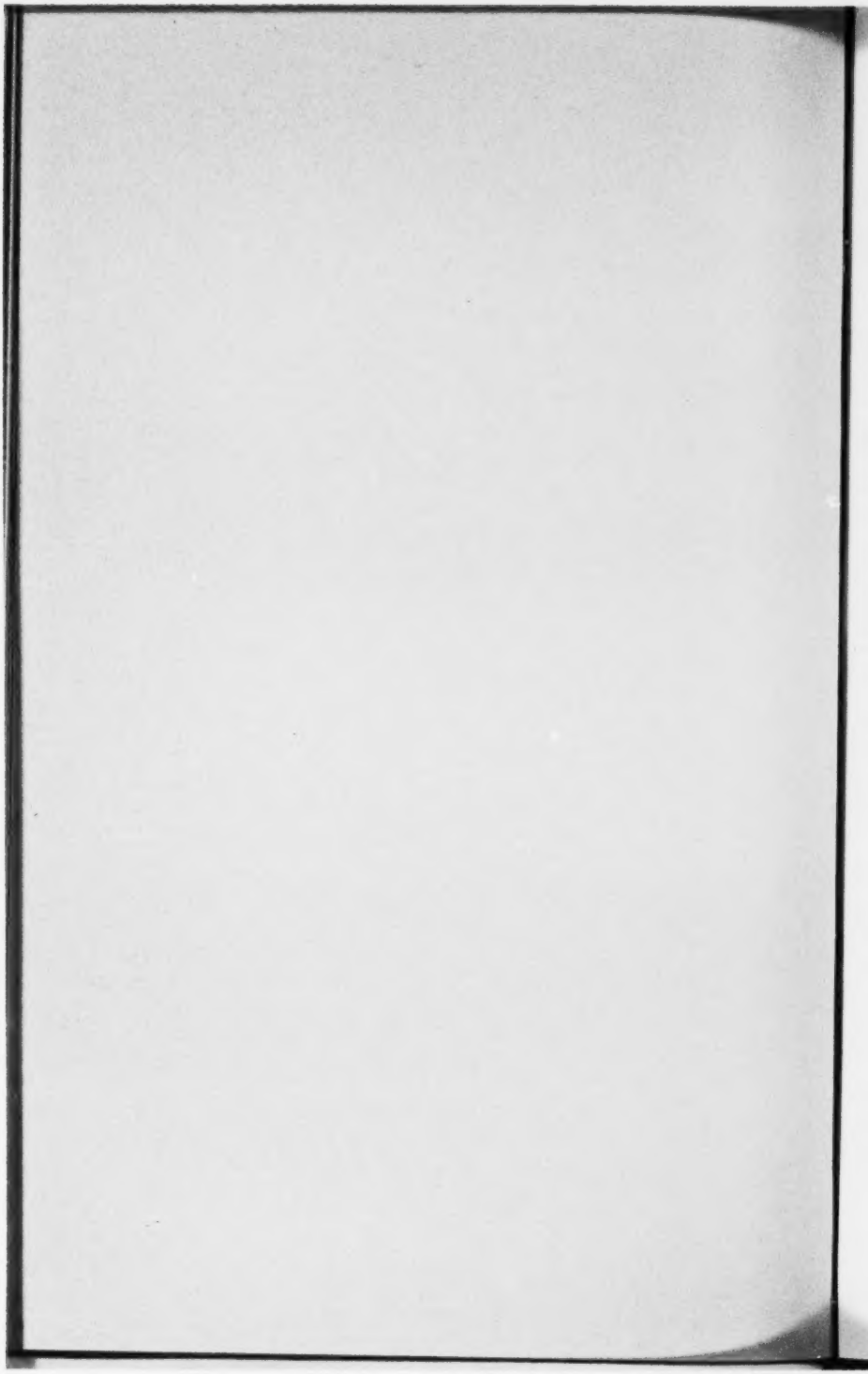
Respectfully submitted,

J. M. Mannon, Jr.,
Attorney for Petitioner.

John W. Parker,
Morris M. Doyle,
Of Counsel.

Dated: San Francisco, California, June 21, 1941.

APPENDIX FOLLOWS



Appendix

STATUTORY PROVISIONS INVOLVED

Revenue Act of 1932, Section 501 (Title 26 U. S. C., 1934 Ed. Sec. 550):

"Imposition of tax.

"(a) For the calendar year 1932 and each calendar year thereafter a tax, computed as provided in section 502, shall be imposed upon the transfer during such calendar year by any individual, resident or nonresident, of property by gift.

"(b) The tax shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible; but, in the case of a nonresident not a citizen of the United States, shall apply to a transfer only if the property is situated within the United States. The tax shall not apply to a transfer made on or before the date of the enactment of this Act."

Revenue Act of 1932, Section 503 (Title 26 U. S. C., 1934 Ed. Sec. 552):

"Where property is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration shall, for the purpose of the tax imposed by this title, be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year."

California Civil Code, Section 206:

"**Reciprocal duties of parents and children in maintaining each other.** It is the duty of the father, the mother, and the children of any poor person who is unable to maintain himself by work, to maintain such person to the extent of their ability. The promise of an adult child to pay for necessaries previously furnished to such parent is binding. [Enacted 1872]"

Deering's Civil Code of the State of California, 1937 Edition, p. 59.

California Probate Code, Section 1502:

"**Management of ward's estate: Reimbursement of guardian.** Every guardian of an estate must manage it frugally and without waste, and apply the income, as far as may be necessary, to the comfortable and suitable support, maintenance and education of the ward and his family, if any; and if the income is insufficient for that purpose, he may sell or mortgage or give a deed of trust upon any of the property, as hereinafter provided. When a guardian has advanced, for the suitable support, maintenance or education of his ward, an amount not disproportionate to the value of the ward's estate or his condition of life, and the same is made to appear to the satisfaction of the court by proper vouchers and proofs, the guardian must be allowed credit therefor in his settlements. [Enacted 1931.]"

Deering's Probate Code of the State of California, 1937 Edition, p. 186.

California Probate Code, Section 1558:

"**Allowances by court to next of kin of an insane or incompetent person out of surplus income.** On the

application of the guardian or next of kin of an insane or incompetent person, the court may direct the guardian to pay and distribute surplus income, not used for the support and maintenance of the ward, or any part of such surplus income, to the next of kin whom the ward would, in the judgment of the court, have aided, if said ward had been of sound mind. The granting of such allowance and the amounts and proportions thereof shall be discretionary with the court, but the court shall give consideration to the amount of surplus income available after due provision has been made for the proper support and maintenance of the ward, to the circumstances and condition of life to which the ward and said next of kin have been accustomed and to the amount which the ward would, in the judgment of the court, have allowed said next of kin, had said ward been of sound mind. Notice of the hearing on said application shall be given as provided in section 1557 of this code. [Added by Stats. 1935, p. 1665.]

Deering's Probate Code of the State of California, 1937 Edition, p. 198.

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes and regulations involved	2
Statement	2
Argument	3
Conclusion	6
Appendix	7

CITATIONS

Cases:	
Blair v. *Commissioner*, 300 U. S. 5	3
Freuler v. *Helvering*, 291 U. S. 35	3
Helvering v. *Leonard*, 310 U. S. 80	5
Lyeth v. *Hoey*, 305 U. S. 188	4
Morgan v. *Commissioner*, 309 U. S. 78	4
United States v. *Pelzer*, No. 393, October Term, 1940, decided March 3, 1941	4
Statutes:	
Civil Code of California (Deering) 1937:	
Sec. 206	3, 7
Civil Procedure and Probate Codes of California (Deering) 1937:	
Sec. 1502	5, 7
Sec. 1558	5, 8
Revenue Act of 1932, c. 209, 47 Stat. 169:	
Sec. 501 (U. S. C., Title 26, Sec. 550)	7
Sec. 503 (U. S. C., Title 26, Sec. 552)	4, 7
Sec. 504 (U. S. C., Title 26, Sec. 553)	5
Miscellaneous:	
H. Rep. No. 708, 72d Cong., 1st Sess., p. 29 (1939–1 Cum. Bull. (Part 2) 457, 478)	5
S. Rep. No. 665, 72d Cong., 1st Sess., p. 41 (1939–1 Cum. Bull. (Part 2) 496, 525–526)	5
Treasury Regulations 79:	
Art. 1	4, 8
Art. 8	4, 8

401706—41

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 205

A. CRAWFORD GREENE, GUARDIAN OF THE ESTATE OF ALICE H. LESTER, AN INCOMPETENT PERSON, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Board of Tax Appeals (R. 64–85) is reported in 41 B. T. A. 515. The opinion of the Circuit Court of Appeals (R. 112–123) is reported in 119 F. (2d) 383.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered April 21, 1941 (R. 123–124). A peti-

tion for rehearing was denied May 23, 1941. (R. 124.) The petition for a writ of certiorari was filed June 25, 1941. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The estate of an incompetent paid substantial sums as allowances for the support of her adult children during the taxable year. These payments were made pursuant to directions of the state court having jurisdiction of the incompetent's estate. Were the payments taxable as gifts?

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are printed in the Appendix, *infra*, pp. 7–9.

STATEMENT

The facts were summarized in the findings of fact of the Board of Tax Appeals (R. 65–78).

The taxpayer is the guardian of the estate of Alice H. Lester, an incompetent person. The latter's property has been managed under the direction of the Superior Court of California for many years (R. 65). During 1936 and 1937, Mrs. Lester's two daughters received $21,000 and $20,000, respectively, out of the income of the incompetent's estate. Both daughters were over forty years of age and were married during the years in question (R. 65–66). (R. 72, 76.) These

payments were made pursuant to orders of the California Superior Court, which found that the daughters were wholly dependent upon the estate of their mother for maintenance and support and had no other means with which to defray living expenses (R. 66–68). The Board found that the daughters of Mrs. Lester were "poor persons unable to maintain themselves by work," as that expression is used in Section 206 of the California Civil Code. They were found to be entirely dependent upon the money received from their mother's estate (R. 70).

The Commissioner determined that the payments made to the daughters were gifts, and asserted deficiencies in gift taxes for the years 1936 and 1937 (R. 78). The Board held that the payments should not be deemed gifts, and overruled the deficiencies asserted by the Commission. The Circuit Court of Appeals reversed the decision of the Board (R. 123–124).

ARGUMENT

The gist of the petitioner's contention is that the decision below is in conflict with the rule that federal courts must follow decisions of state courts interpreting local rules of property law, where the operation of federal taxing acts depends on such local rules. *Blair* v. *Commissioner,* 300 U. S. 5; *Freuler* v. *Helvering,* 291 U. S. 35. But the operation of the federal act in this case does not turn upon local rules of property law. Rather, the ques-

tion presented here is whether or not the allowances to the children of Mrs. Lester should be classified as gifts under the revenue act, whatever label they may bear under state law. Whether a transaction results in a gift depends on the congressional definition of the term "gift," and this is purely a question of federal law. *United States* v. *Pelzer,* No. 393, October Term, 1940, decided March 3, 1941; *Morgan* v. *Commissioner,* 309 U. S. 78; *Lyeth* v. *Hoey,* 305 U. S. 188.

Section 503 of the Revenue Act of 1932 defines a gift for purposes of the federal tax law, and the definition is amplified in Articles 1 and 8 of Treasury Regulations 79, promulgated thereunder. A transaction of the type involved herein will not be termed a gift under this definition, if there exists adequate and full consideration in money or money's worth. Whether or not there is sufficient consideration under this definition is clearly a question of federal law, and petitioner concedes this to be correct (Pet. 9).

Assuming that the discharge of an obligation to support can be deemed adequate and full consideration in money or money's worth under the Revenue Acts, it is nevertheless highly doubtful that the payments involved herein were made in fulfillment of parental duty to support adult married children rather than in recognition of a parent's natural inclination. It is unquestioned that the existence of an obligation to support the children is to be determined by state law. The decisions of the

state court do not, however, clearly recognize the existence of such an obligation. Cf. *Helvering* v. *Leonard,* 310 U. S. 80, 84. The effect of the orders was merely to permit the guardian to use such of the ward's surplus income as the court believed the ward would have given to her daughters had she been of sound mind (R. 68–69). The court employed the terminology of Section 1558 of the Probate Code rather than the words of Section 206 of the Civil Code, and only the latter refers to an obligation to support "poor" relations. Therefore, there is no evidence that the payments discharged obligations of the ward or that the estate received any consideration which is measurable in money or money's worth. The payments clearly fall into the category of gifts.

Congress has expressly contemplated gifts of the type involved herein in permitting the exclusion from the category of taxable gifts all sums under $5,000. Revenue Act of 1932, Section 504 (b). These exclusions are intended to obviate the necessity of keeping track of ordinary allowances to children, Christmas gifts, and so forth. H. Rep. No. 708, 72d Cong., 1st Sess., p. 29 (1939–1 Cum. Bull. (Part 2) 457, 478); S. Rep. No. 665, 72d Cong., 1st Sess., p. 41 (1939–1 Cum. Bull. (Part 2) 496, 525–526). Unusually large allowances, such as those made in this case, exceeding the statutory exclusions and covering items such as a $590 fur coat and a $2,000 automobile, should clearly be included

as taxable gifts. (R. Vol. II, Exhibits S–79 and S–80.)

CONCLUSION

There is no conflict of decisions. The decision below is correct. The petition should be denied.

Respectfully submitted.

CHARLES FAHY,
Acting Solicitor General.
SAMUEL O. CLARK, JR.,
Assistant Attorney General.
SEWALL KEY,
MICHAEL H. CARDOZO IV,
Special Assistants to the Attorney General.

JULY 1941.

APPENDIX

Revenue Act of 1932, c. 209, 47 Stat. 169:

SEC. 501. IMPOSITION OF TAX.

(a) For the calendar year 1932 and each calendar year thereafter a tax, computed as provided in section 502, shall be imposed upon the transfer during such calendar year by any individual, resident or nonresident, of property by gift.

* * * * *

(U. S. C., Title 26, Sec. 550.)

SEC. 503. TRANSFER FOR LESS THAN ADEQUATE AND FULL CONSIDERATION.

Where property is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration shall, for the purpose of the tax imposed by this title, be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year (U. S. C., Title 26, Sec. 552).

Civil Code of California (Deering) 1937:

SEC. 206. *Reciprocal duties of parents and children in maintaining each other.*—It is the duty of the father, the mother, and the children of any poor person who is unable to maintain himself by work, to maintain such person to the extent of their ability. * * *

Civil Procedure and Probate Codes of California (Deering) 1937:

SEC. 1502. *Management of ward's estate: Reimbursement of guardian.*—Every guar-

dian of an estate must manage it frugally and without waste, and apply the income, as far as may be necessary, to the comfortable and suitable support, maintenance and education of the ward and his family, if any; and if the income is insufficient for that purpose, he may sell or mortgage or give a deed of trust upon any of the property, as hereinafter provided. * * *

* * * * *

SEC. 1558. *Allowances by court to next of kin of an insane or incompetent person out of surplus income.*—On the application of the guardian or next of kin of an insane or incompetent person, the court may direct the guardian to pay and distribute surplus income, not used for the support and maintenance of the ward, or any part of such surplus income, to the next of kin whom the ward would, in the judgment of the court, have aided, if said ward had been of sound mind. The granting of such allowance and the amounts and proportions thereof shall be discretionary with the court, but the court shall give consideration to the amount of surplus income available after due provision has been made for the proper support and maintenance of the ward, to the circumstances and conditions of life to which the ward and said next of kin have been accustomed and to the amount which the ward would, in the judgment of the court, have allowed said next of kin, had said ward been of sound mind. Notice of the hearing on said application shall be given as provided in section 1557 of this code.

Treasury Regulations 79 (1936 Ed.):

ARTICLE 1. *Imposition of tax.*—The statute imposes no tax upon property, but subjects

to tax transfers of property by gift. The tax is not limited in its imposition to transfers of property without a valuable consideration, which at common law are treated as gifts, but extends to sales and exchanges for less than an adequate and full consideration in money or money's worth. * * *

ART. 8. *Transfers for a consideration in money or money's worth.*—Transfers reached by the statute are not confined to those only which, being without a valuable consideration, accord with the common law concept of gifts, but embrace as well sales, exchanges, and other dispositions of property for a consideration in money or money's worth to the extent that the value of the property transferred by the donor exceeds the value of the consideration given therefor. However, a sale, exchange, or other transfer of property made in the ordinary course of business (a transaction which is bona fide, at arm's length, and free from any donative intent), will be considered as made for an adequate and full consideration in money or money's worth. A consideration not reducible to a money value, as love and affection, promise of marriage, etc., is to be wholly disregarded, and the entire value of the property transferred constitutes the amount of the gift.

U. S. GOVERNMENT PRINTING OFFICE: 1941

Office - Supreme Court, U. S.
FILED
AUG 4

In the Supreme Court of the United States

October Term 1941

No. 205

A. Crawford Greene, Guardian of the Estate of Alice H. Lester, an incompetent person,

Petitioner,

vs.

Commissioner of Internal Revenue,

Respondent.

Petitioner's Reply to Brief for Respondent in Opposition to Petition for Writ of Certiorari

J. M. Mannon, Jr.,
Attorney for Petitioner

John W. Parker,
Morris M. Doyle,
Of Counsel.

July 30, 1941.

PARKER PRINTING COMPANY, 545 SANSOME STREET, SAN FRANCISCO

Statutes and Authorities Cited

	Page
Blair v. Commissioner, 300 U. S. 5	4
California Probate Code:	
Section 1502	2
Section 1558	2, 3
California Civil Code, Section 206	2
Freuler v. Helvering, 291 U. S. 35	4
Revenue Act of 1932, Section 504(b)	3

In the Supreme Court of the United States

October Term 1941

No. 205

A. Crawford Greene, Guardian of the Estate of Alice H. Lester, an incompetent person,

Petitioner,

vs.

Commissioner of Internal Revenue,

Respondent.

Petitioner's Reply to Brief for Respondent in Opposition to Petition for Writ of Certiorari

Respondent does not defend the refusal of the Circuit Court of Appeals to consider whether the payments involved were made in discharge of an obligation under California law, but argues by innuendo that this refusal made no difference because there was no obligation under California law, and hence that the payments were not made in discharge of any obligation. Respondent admits the pertinence of state law in this case by saying, "It is

unquestioned that the existence of an obligation to support the children is to be determined by state law." (Resp. Br., 4) This seems to concede that the decision of the Circuit Court of Appeals is erroneous, because that court refused to consider whether an obligation exists under state law and held that state law is "immaterial". (R., Vol. 1, 120)

Without endeavoring to support the basis of the decision of the Circuit Court of Appeals, namely, that California law is immaterial, respondent seeks to justify the result reached by that court upon the different ground that there was no obligation under California law. On this ground the record is against respondent because the Board of Tax Appeals and the dissenting judge below expressly held that there was an obligation under California law. The other two judges below refused to consider the question. Under the California statutes the incompetent's daughters are entitled as a matter of right to support from their mother's estate. (Pet. Br., 16-17) The orders of the probate court were responsive to the requirements of the statutes. (Pet. Br., 18) Respondent cites no authority which questions the existence of an obligation under California law. His suggestion that the orders of the probate court used the discretionary terminology of California Probate Code Section 1558 rather than the words of California Civil Code Section 206 (Resp. Br., 4, 5) overlooks the fact that Section 1558 was not adopted until after the orders here involved were made and the further fact that the orders were couched in the language of Probate Code Section 1502, which was in force at all times material. (R., Vol. I, 65-72; Pet. App. ii) Additionally, it is stipulated

that the probate court refused to make any allowances under Section 1558 until 1937 (R., Vol. I, 55-57), and the allowances then made are not involved. (Pet. Br., 17)

Respondent's final suggestion (Resp. Br., 5) is that the $5,000 exclusion permitted in Section 504(b) of the Revenue Act of 1932 was designed by Congress to cover payments of the kind here involved. This suggestion begs the question because the exclusion referred to is an exclusion of *gifts* to the extent of $5,000 to each donee. If the payments here involved were gifts, they are taxable except to the extent excluded. But if they were in discharge of an obligation of support, they were not gifts and are not taxable, irrespective of the exclusion permitted. We think respondent cannot seriously contend that because of the permitted exclusion payments in discharge of an obligation are tax-free only to the extent of $5,000 to each obligee.

Respondent's argument, suggesting that the payments here involved were gifts because not obligatory under California law, appears to concede the adequacy of the grounds for certiorari as set forth in the petition. Respondent assumes (Resp. Br., 4), as we do, that payments made in discharge of an obligation imposed by state law are not gifts. The only remaining question is whether there was an obligation under state law, and in this respect the operation of the federal tax statute is dependent upon state law. The Circuit Court of Appeals refused to consider that question although in that regard the other five judges of the same court would appear to disagree with the two judges who decided this case. (Pet., 9-11; Pet. Br., 22-26) An obligation against the incompetent's

estate existed and was enforced and measured by the California probate court. The determinations of that court are conclusive under the principle of *Blair v. Commissioner,* 300 U. S. 5, and *Freuler v. Helvering,* 291 U. S. 35.

Respectfully submitted,

J. M. MANNON, JR.,
Attorney for Petitioner.

JOHN W. PARKER,
MORRIS M. DOYLE,
Of Counsel.

San Francisco, California, July 30, 1941.